

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TIMOTHY W. SAUNDERS,

Petitioner,

V.

CYNTHIA STEWART,

Respondent.

Case No.

1:10-cv-00439-KD-C

PETITIONER'S MOTION FOR LEAVE TO AMEND

Petitioner Timothy W. Saunders respectfully moves this Court for an order permitting him to amend his original petition for Habeas Corpus under 28 U.S.C. § 2254. In its October 20, 2017, order lifting the stay on this matter, this Court ordered Petitioner to file an Amended Petition by November 27, 2017. Doc. 39 at 2. Petitioner now requests leave to amend, to the extent necessary, under Federal Rule of Civil Procedure 15(a)(2).

DISCUSSION

Under federal habeas law, an application for a writ of habeas corpus generally may be amended or supplemented as provided in the rules of procedure applicable to civil actions. 28 U.S.C. § 2242; Fed.R.Civ.P. 81(a)(4); *see also* Rule 12, Rules Governing § 2254 Cases (providing that the Federal Rules of Civil Procedure may be applied when appropriate and “when not inconsistent with these

rules.”); *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir.2007) (stating Federal Rules of Civil Procedure apply to habeas proceedings, to the extent they are not inconsistent with the statutes that govern habeas proceedings).

Federal Rule of Civil Procedure 15 governs amended pleadings in civil cases. FRCP 15(a)(2) allows for an amended complaint “with the opposing party's written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

Aside from following the Court’s direction from the order lifting the stay (Doc. 39), Petitioner further amended his petition to include an updated procedural history since the original filing in 2010. Petitioner also included record cites in the amended petition to the record requested by this Court in the order lifting the stay (Doc. 39), and included all arguments that were raised in the prior proceedings in State Court.

Counsel for Mr. Saunders has asked whether counsel for Respondent Cynthia Stewart opposes this Motion for Leave to Amend and has been informed, in writing, that the Respondent does not oppose the relief requested in this Motion. Accordingly, this Court should grant this unopposed Motion for Leave to Amend and allow Mr. Saunders to file the Amended Petition attached to this Motion as **Exhibit A.**

Respectfully submitted this 27th day of November, 2017.

/s/ John G. Smith

One of the Attorneys for Appellant Timothy
Wade Saunders

OF COUNSEL:

John G. Smith
BALCH & BINGHAM LLP
105 Tallapoosa St., Ste. 200
Montgomery, AL 36101-0078
Telephone: (334) 269-3150
Facsimile: (866) 316-9461
Email: jgsmith@balch.com

Michael L. Edwards
Adam K. Israel
Robert C. Anderson
BALCH & BINGHAM LLP
1901 Sixth Ave. North, Ste. 1500
Birmingham, AL 35203-4642
Telephone: (205) 226-3495
Facsimile: (205) 488-5893
Email: medwards@balch.com
aisrael@balch.com
randerson@balch.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following this the 27th day of November, 2017:

Lauren A. Simpson
Assistant Attorney General
Office of the Attorney General
Capital Litigation Division
501 Washington Avenue
Montgomery, Alabama 36130
Telephone: (334) 353-1209
Facsimile: (334) 353-3637
Email: lsimpson@ago.state.al.us

In addition, I hereby certify that I have served a copy of the foregoing document to the following non-CM/ECF participants by express consent via U.S. Mail and by electronic means this the 27th day of November, 2017.

Cynthia Stewart
Warden of Holman Correctional Facility
c/o Thomas R. Govan, Jr.
Chief, Capital Litigation Division
Deputy Attorney General
Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130

/s/ John G. Smith

OF COUNSEL